

ORIGINAL

Before the
Copyright Royalty Board
United States Copyright Office
Washington, D.C. 20540

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SEP 1 2 2006

Copyright Royalty Board

In the Matter of)
)
Distribution of DART Sound Recordings)
Fund/Featured Recording Artist and Copyright)
Owner Subfund Royalties)
For 2005)
)

Docket No. 2006-4 CRB DD 2005

NOTICE OF SETTLEMENT AND REQUEST FOR PARTIAL DISTRIBUTION OF THE 2005
SOUND RECORDINGS FUND ROYALTIES

The Alliance of Artists and Recording Companies ("AARC"), on behalf of itself and Vega Records, Inc., Donald Keith Johnson, Fifth Avenue Media, Ltd., VP Record Distributors Inc., Zen Tricksters, J Rad (Cannata), Bruce Hamby, Cheryl Hill, Kris Keller K4, Kosmic Daydream, Von Cello, Nation, John KAIZAN Neptune, Persuaders, International Royalty Recovery Services, MAW Records, Inc., ROIR Records, Inc., Masters at Work, Vibrations and Bernard James Jackson IV (collectively referred to as "Settling Parties"), submits this notice reporting that the 2005 Audio Home Recording Act of 1992 ("AHRA")/Sound Recordings Fund Distribution proceeding is settled, except for the claims of Edward Mazique and C'ella Jones. Therefore, the Settling Parties request partial distribution of the 2005 featured artists' and copyright owners' subfund as follows:

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I. Status of Settlement

AARC pursued and obtained settlements with fourteen of the fifteen other copyright owners' subfund claimants and seven of the eight other featured artists' subfund claimants, as listed below:

Featured Artists' and Sound Recording Copyright Owners' subfund

Alliance of Artists and Recording Companies (AARC)

**Bernard James Jackson IV

Bruce Hamby, Cheryl Hill, J Rad (Cannata), John Kaizan Neptune, Kosmic Daydream,
Kris Keller K4, Nation, Persuaders, Von Cello, Zen Tricksters

****Donald Keith Johnson

Fifth Avenue Media, Ltd.

International Royalty Recovery Services

***Joe Kondwani Lee

*John Romano

Masters at Work

MAW Records, Inc

ROIR Records, Inc.

*Trudy Ann Borset

Vega Records, Inc

Vibrations

VP Record Distributors, Inc.

* These claimants withdrew their claims.

** This claimant has signed on with AARC. Therefore, AARC will represent them in the current and all future AHRA Sound Recording Fund proceedings.

*** This claimant's claim was dismissed.

**** This claimant will receive their payment directly from the Copyright Royalty Board.

All other claimants have settled with AARC only regarding the 2005 proceeding.

The only two claimants with whom AARC has not obtained settlements are Edward Mazique and C'ella Jones. Ms. Jones' copyright owners' claim is patently deficient because it does not list a sound recording for which she owns the reproduction right and AARC has filed a motion to dismiss it. See Motion of the Alliance of Artists and Recording Companies to Dismiss Sound Recordings Copyright Owners' Subfund Claim, Docket No. 2006-4 CRB DD 2005, (August 3, 2006) (on file with Copyright Office). Mr. Mazique's copyright owners' and featured artists' claims should also be dismissed. AARC has filed a motion based on Mr. Mazique's

failure to follow the procedural requirements that he engage in a good-faith settlement negotiations. *See* Motion of the Alliance of Artists and Recording Companies to Dismiss Sound Recordings Copyright Owners' Subfund Claim, Docket No. 2006-4 CRB DD 2005, (July 25, 2006) (on file with Copyright Office).¹

II. The Copyright Royalty Board Has Authority to Order Pre-controversy Partial Distributions.

While we remain confident that Mr. Mazique's and Ms. Jones' claims will be dismissed and, as such, no controversy will be declared in the 2005 Sound Recordings Fund proceeding, the Copyright Royalty Board ("CRB") has not yet issued a determination, and has in fact scheduled a hearing on the motions regarding Mr. Mazique's and Ms. Jones' claims for November 8, 2006. During the interim, partial distribution is warranted to prevent any further delay in the distribution of royalties that are not in controversy. The CRB regulations direct the Copyright Royalty Judges to order pre-controversy partial distributions:

To the extent that a settlement or partial settlement has been reached in a distribution proceeding, that agreement will provide the basis for a full or partial distribution. 37 C.F.R. §351.2 (b)(1)(2005)(emphasis added); *see also* 17 U.S.C. §1007(c)(2004).

In addition to statutory and regulatory mandates, there is also ample precedent supporting the CRB authority to order a partial distribution of royalties prior to a formal declaration of controversy. *See e.g.*, Order, In the Matter of Distribution of the 1995,1996,1997 and 1998 Digital Audio Home Recording Funds, Docket No. 99-3 CARP DD 95-98 (December 22, 1999); Order, In the Matter of Distribution of the 1998 Cable Royalty Fund, Docket No. 200-6 CARP CD 98 (October 12, 2000); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP CD 96 (October 8, 1998); Order, In The Matter of Distribution of the

¹ Mr. Mazique failed to respond to AARC's motion, providing another example of his disregard for Copyright Royalty Board's procedural requirements.

1995 Cable Royalty Fund, Docket No. 97-2 CARP CD 95 (October 20, 1997); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96 CARP CD 94 (October 23, 1996); Order, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP CD 92 (September 12, 1994); Order, In The Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP CD 993 (September 24, 1994); see also Order, In The Matter of Distribution of the 1992-1995 Satellite Royalty Funds, Docket No 97-1 CARP SD 92-95 (March 17,1997). These proceedings must be considered as precedent by the CRB under the provisions of section 803(a)(1) of the Copyright Royalty and Distribution Reform Act of 2004, which states, “the Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, and the Copyright Royalty Judges.....” Copyright Royalty and Distribution Reform Act, P.L. NO. 108-419, 118 Stat. 2341,2348-2349 (2004) (to be codified at 17 U.S.C. 803(a)(1)).

In the aforementioned proceedings, the Copyright Office reasoned that the delay between the collection of royalties, the filing of claims and the expected initiation of proceedings justified partial distribution of the relevant royalty funds in advance of the declaration of a controversy.

In the case at hand, the delay between collection and distribution of DART royalties also warrants partial distribution. Mr. Mazique’s refusal to comply with procedural requirements and Ms. Jones’ baseless claim have already delayed distribution by months, during which time the Settling Parties have worked diligently to resolve controversies regarding nearly all of the royalties. Any further delay in distribution of the royalties that are not in controversy would

unfairly deprive the owners of such royalties. Accordingly, the Settling Parties believe that the CRB should distribute 98% of the 2005 DART Sound Recordings Fund.

The claims for 2005 royalties were filed in January and February of this year. In March, shortly after the February 28 due date for claims, the CRB released a list of claimants, and AARC used this list to reach settlements with all other claimants. If not for Mr. Mazique's and Ms. Jones' claims, the 2005 Sound Recordings Fund proceeding would have been settled in early summer and distributed shortly thereafter. However, because of the two outstanding claims, the CRB has scheduled a hearing on the motions for November 8, 2006. If a partial distribution is not issued, the distribution of the Settling Parties' royalties will be delayed for months. It may not occur until next year. Such a delay would substantially deprive the Settling Parties of the royalties they have negotiated for in good faith in a concerted effort to minimize administrative costs and expedite the proceeding by avoiding litigation. Accordingly, the Settling Parties respectfully request that the CRB distribute 98% of the 2005 DART Sound Recordings Fund.

III. Partial Distribution of 98% of the 2005 Sound Recordings Fund Is Warranted.

Pursuant to the AHRA, allocation of the Sound Recordings Fund royalties must be based on distribution (record sales) of the claimants' sound recordings during the royalty year, in this case 2005. 17 U.S.C. § 1006; 62 Fed. Reg. 6,558, 6,561 (February 12, 1997). SoundScan is the industry-recognized source for sound recording sales in the United States and so the data source used by AARC to determine annual distribution of royalties.

Historically decision makers in DART distribution proceedings have recognized SoundScan as a reliable sales data source. Distribution Order, Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9362 (February 7,

2001): *see also* Distribution Order, Distribution of 1992, 1993 and 1994 Musical Works Fund, 62 Fed. Reg. 6558 (February 12, 1997).

Based on figures compiled by SoundScan, the 2005 total universe of record sales for all featured artists and copyright owner claimants are 444,434,956 and 873,963, 209, respectively. *See* Declaration of Richard Seltzer, Exhibit A. SoundScan compiles sales data based on labels and featured artists. *Id.* The SoundScan data lists no sales for an artist named C'ella Jones, or an artist or label named Edward Mazique. *Id.* Ms. Jones claims the sound recordings of The Gorillaz, Ko Kane, R. Kelly, Mike Jones, Nelly, Lil Jon and the East Side Boys. Therefore, she is claiming the portion of the 2005 copyright owners' subfund that belongs to well-known record companies such as EMI, BMG, Warner, Universal, SICCNESS and TVT. Ms. Jones' claim is unsubstantiated by the facts and therefore, opposed by AARC. However, even if she were awarded the portion of the copyright owners' subfund royalties earned by these sound recordings, she would be entitled to .6% of these royalties.

The Settling Parties' copyright owners subfund claim totals 873,963,209 units, which represents 99.4% of the copyright owners subfund royalties. Therefore, even if Mr. Mazique and Ms. Jones are successful in their claims, only Ms. Jones would be entitled to royalties and they would total .6% of the copyright owners' subfund royalties.

We therefore request that the Copyright Office distribute 98% of the 2005 royalties when those royalties next become available for distribution. Distribution of less than 98% of the 2005 funds would further deprive the Settling Parties of a substantial amount of royalties that belong to them. Furthermore, we believe that the 2% of Sound Recordings Fund royalties that would remain with the CRB would provide more than sufficient funds to satisfy Mr. Mazique's and Ms. Jones' small individual claims, which at best, total barely half of one percent.

As the amounts to be distributed to each Settling Party, with the exception of Donald Johnson, are confidential, we move to have the distribution made in bulk to AARC, as a common agent for all of the Settling Parties other than Mr. Johnson. Agreements as to the proportionate allocation of royalties and designation of a common agent to receive payment on behalf of the Settling Parties are permitted by section 1007 of the AHRA. 17 U.S.C. 1007 (a)(2)(2000).

The Settling Parties also hereby agree that the 2005 royalties should be distributed by the CRB subject to the condition uniformly imposed in such circumstances. Specifically, in the event that the final 2005 percentages shares to the Settling Parties differ from the distributions made pursuant to this motion, any party who has received more than its share must return the overpayment plus the interest that the payment would have earned had they remained in the fund to the proper party. *See, e.g.,* Order, In The Matter of Distribution of the 1999 Satellite Royalty Fund, Docket No. 2001-5 CARP SD 99 (October 17, 2001); Order, In The Matter of Distribution of the 1999 Cable Royalty Fund, Docket No. 2001-6 CARP SD 99 (October 17, 2001); Order, In The Matter of Distribution of the 1999 Satellite Royalty Fund Docket NO. 97-1 CARP SD 92-95 (March 17, 1997); Order, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP CD 92 (September 12, 1994); Order, In The Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP CD 993 (September 24, 1994); Order, In The Matter of Distribution of the 1994 Cable Royalty Fund Docket No. 96 CARP CD 94 (October 23, 1996); Order, In The Matter of Distribution of the 1995 Cable Royalty Fund, Docket No. 97-2 CARP CD 95 (October 20, 1997); Order, In The Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP CD 96 (October 9, 1998).

IV. Conclusion

The Settling Parties have agreed that their settlements are reached in an attempt to minimize the costs of the 2005 distribution proceeding. Consequently, the Settling Parties have agreed that the terms of the settlement agreement have no precedential effect on the future AHRA proceedings.

WHEREFORE, for the reasons set forth above, the Settling Parties respectfully request that the CRB make a prompt partial distribution of the 2005 DART Sound Recordings Fund to the Settling Parties as follows:

Copyright Owners Subfund:

AARC	97.9992992%
Donald Johnson	.00070079196%

Featured Artists Subfund:

AARC	97.9986423%
Donald Johnson	.00135770141%

Respectfully submitted,
On Behalf of Settling Parties



Linda R. Bocchi, Esq.
Executive Director
Alliance of Artists and Recording Companies
700 N. Fairfax Street, Suite 601
Alexandria, VA 22314
(703) 535-8101 (phone)
(703) 535-8105 (facsimile)

September 1, 2006

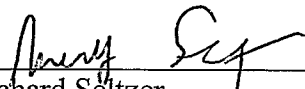
EXHIBIT A

DECLARATION OF RICHARD SELTZER

I, Richard Seltzer, declare under penalty of perjury as follows:

1. I am a Professor of Political Science at Howard University, and I currently teach two advanced graduate courses in statistics and two other courses in statistics and survey techniques. I have also designed and conducted surveys for over twenty years. I have previously been qualified as an expert in statistics and survey research in several federal and state courts. In addition to my teaching responsibilities, I have acted as a consultant to a variety of organizations in creating and maintaining complex databases. In conjunction with one of these clients – the Alliance of Artists and Recording Companies (“AARC”) – I have become familiar with SoundScan sound recordings sales data.
2. I confirm that AARC’s Royalty Distribution System uses SoundScan data to determine the annual allocation of Sound Recordings Fund royalties among claimants before the Copyright Royalty Board.
3. I have reviewed the 2005 SoundScan sales data in the AARC Royalty Distribution System.
4. The 2005 universe of record sales for claimants to the copyright owners subfunds, which include the Settling Parties as defined in AARC’s “Report of Settlement Status and Request for Partial Distribution of the 2005 Sound Recordings Fund,” C’ella Jones and Edward Mazique is 873,963,209 units.
5. The 2005 universe of record sales for claimants to the featured artists subfunds, which include the Settling Parties as defined in AARC’s “Report of Settlement Status and Request for Partial Distribution of the 2005 Sound Recordings Fund” and Edward Mazique is 444,434,956 units.
6. Total record sales during 2005 for Gorillaz “Demon Days”, Ko Kane “Mr. Kane Pt. II”, R. Kelly “Tp.3 Reloaded”, Mike Jones “Who is Mike Jones”, Nelly “Sweat”, Lil Jon and the East Side Boys “Crunk Juice”, as reported by SoundScan, are 5,413,799 units.
7. SoundScan compiles sales data based on labels. I searched the 2005 SoundScan data but did not find a label named C’ella Jones. Therefore, I confirm that SoundScan reported no sales for “C’ella Jones” during 2005.
8. I also searched the 2005 SoundScan data but did not find an artist or label named Edward Mazique. Therefore, I confirm that SoundScan reported no sales for “Edward Mazique” during 2005.

I declare under penalty of perjury that the foregoing is true and correct.



Richard Seltzer

8/25/06
Date

CERTIFICATE OF SERVICE

I, Breanna Dietrich, certify that on this September 1, 2006, a copy of the foregoing "Notice of Settlement and Request for Partial Distribution of the 2005 Sound Recordings Fund Royalties" was served, by the designated delivery method, on the following parties:


Breanna Dietrich

By Email:

C'ella Jones
jonescella80@aol.com

By Overnight Mail:

Edward Mazique
8301 E. Marlena Cr. S.
Tucson, AZ 85715

By Standard Mail:

Donald Keith Johnson
6643 Elizabeth Ave. SE
Auburn, WA 98092

Vega Records, Inc.
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

MAW Records
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

Fifth Avenue Media, Ltd.
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

VP Record Distributors, Inc.
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

ROIR Records, Inc.
c/o Jeffrey Jacobson
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Masters At Work
c/o Jeffrey Jacobson
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Vibrations
c/o Jeffrey Jacobson
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Zen Tricksters
c/o Jeffrey Jacobson
60 Madison Avenue
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J Rad
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

Bruce Hamby
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

Cheryl Hill
c/o Jeffrey Jacobson
60 Madison Avenue
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Kris Keller K4
c/o Jeffrey Jacobson
60 Madison Avenue
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Kosmic Daydream
c/o Jeffrey Jacobson
60 Madison Avenue
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Von Cello
c/o Jeffrey Jacobson
60 Madison Avenue
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New York, NY 10010

Nation
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

John Kaizan Npetune
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

Persuaders
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

Bernard James Jackson IV
1105 E. Laurel Ave
Hattiesburg, MS 39401

International Royalty Recovery Service
c/o Gerald Bursey
18 Bunker Hill Drive
Manalapan, NJ 07726

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~~GENERAL COUNSEL
OF COPYRIGHT~~ (CFA)

In the Matter of)
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Fund/Featured Recording Artist and Copyright)
Owner Subfund Royalties)
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Docket No. 2006-4 CRB DD 2005

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The Alliance of Artists and Recording Companies ("AARC"), on behalf of itself and Vega Records, Inc., Donald Keith Johnson, Fifth Avenue Media, Ltd., VP Record Distributors Inc., Zen Tricksters, J Rad (Cannata), Bruce Hamby, Cheryl Hill, Kris Keller K4, Kosmic Daydream, Von Cello, Nation, John KAIZAN Neptune, Persuaders, International Royalty Recovery Services, MAW Records, Inc., ROIR Records, Inc., Masters at Work, Vibrations and Bernard James Jackson IV (collectively referred to as "Settling Parties"), submits this notice reporting that the 2005 Audio Home Recording Act of 1992 ("AHRA")/Sound Recordings Fund Distribution proceeding is settled, except for the claims of Edward Mazique and C'ella Jones. Therefore, the Settling Parties request partial distribution of the 2005 featured artists' and copyright owners' subfund as follows:

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Distribution of DART Sound Recordings)
Fund/Featured Recording Artist Subfund Royalties)
For 2005)
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Docket No. 2006-4 CRB DD 2005

NOTICE OF SETTLEMENT AND REQUEST FOR PARTIAL DISTRIBUTION OF THE 2005
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The Alliance of Artists and Recording Companies ("AARC"), on behalf of itself and Vega Records, Inc., Donald Keith Johnson, Fifth Avenue Media, Ltd., VP Record Distributors Inc., Zen Tricksters, J Rad (Cannata), Bruce Hamby, Cheryl Hill, Kris Keller K4, Kosmic Daydream, Von Cello, Nation, John KAIZAN Neptune, Persuaders, International Royalty Recovery Services, MAW Records, Inc., ROIR Records, Inc., Masters at Work, Vibrations and Bernard James Jackson IV (collectively referred to as "Settling Parties"), submits this notice reporting that the 2005 Audio Home Recording Act of 1992 ("AHRA")/Sound Recordings Fund Distribution proceeding is settled, except for the claims of Edward Mazique and C'ella Jones. Therefore, the Settling Parties request partial distribution of the 2005 featured artists' and copyright owners' subfund as follows:

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On Behalf of Settling Parties



Linda R. Bocchi, Esq.
Executive Director
Alliance of Artists and Recording Companies
700 N. Fairfax Street, Suite 601
Alexandria, VA 22314
(703) 535-8101 (phone)
(703) 535-8105 (facsimile)

September 1, 2006

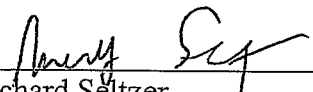
EXHIBIT A

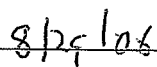
DECLARATION OF RICHARD SELTZER

I, Richard Seltzer, declare under penalty of perjury as follows:

1. I am a Professor of Political Science at Howard University, and I currently teach two advanced graduate courses in statistics and two other courses in statistics and survey techniques. I have also designed and conducted surveys for over twenty years. I have previously been qualified as an expert in statistics and survey research in several federal and state courts. In addition to my teaching responsibilities, I have acted as a consultant to a variety of organizations in creating and maintaining complex databases. In conjunction with one of these clients – the Alliance of Artists and Recording Companies (“AARC”) – I have become familiar with SoundScan sound recordings sales data.
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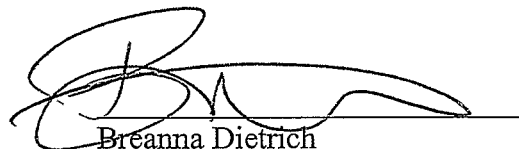
I declare under penalty of perjury that the foregoing is true and correct.


Richard Seltzer


Date

CERTIFICATE OF SERVICE

I, Breanna Dietrich, certify that on this September 1, 2006, a copy of the foregoing "Notice of Settlement and Request for Partial Distribution of the 2005 Sound Recordings Fund Royalties" was served, by the designated delivery method, on the following parties:


Breanna Dietrich

By Email:

C'ella Jones
jonescella80@aol.com

By Overnight Mail:

Edward Mazique
8301 E. Marlena Cr. S.
Tucson, AZ 85715

By Standard Mail:

Donald Keith Johnson
6643 Elizabeth Ave. SE
Auburn, WA 98092

Vega Records, Inc.
c/o Jeffrey Jacobson
60 Madison Avenue
Suite 1026
New York, NY 10010

MAW Records
c/o Jeffrey Jacobson
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Vibrations
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Zen Tricksters
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J Rad
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Bruce Hamby
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Cheryl Hill
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Kris Keller K4
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Kosmic Daydream
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Nation
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